IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3249 OF 1991

Shri Ramjoddin Jubadoddin Kazi,)
deceased heirs:-)

1. Smt.Makabulbi Ramajoddin Kazi,)
2. Shri Ajimoddin Ramajoddin Kazi,)
3. Shri Kisamoddin Ramajoddin Kazi,)
4. Shri Imamoddin Ramajoddin Kazi,)
All of Nasik H.No.3779,)
Kathada Tekali Road,)
(Near Mashid), Nashik.).. Petitioners
(Org.applicant/
Appellant.)

Versus

1. Shri Madhav Karbhari Kapase,)
2. Shri Ranganath Karbhari Kapase,)
3. Shri Ramanath Karbhari Kapase,)
4. Smt.Suresh Ranganath Kapase,)
5. Shri Namdeo Sadashiv Karad,)
6. Smt.Laxmibai Madhav Kapase,)
7. Shri Sampat Madhav Kapase,)
8. Shri Eknath Madhav Kapase,)
9. Shri Balu Madhav Kapase,)
10. Shri Chandu Madhav Kapase,)
11. Shri Shamrao Ranganath Kapase,)
M/G Sitabai Ranganath Kapase,)
Nos.1 to 11 all residing at)
Niphad, Tal. Niphad,)
District - Nashik.)

12. Maharashtra State Co-op. Land)
Dev.Bank Branch, Niphad.)

13. Maharashtra State Co-op. Land)
Dev.Bank Branch, Nasik.).. Respondents
(Org.Opponents/
Respondents)

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Shri N.V.Bandivadekar for the petitioners.

Shri K.Y.Mandlik for the respondent Nos.1 to 11.

Respondent Nos.12 and 13 absent, though served.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 15TH SEPTEMBER, 2006

ORAL JUDGMENT:

1. Heard. The petitioners challenge the orders passed by the lower authorities rejecting their claim for declaration of the sale deed dated 11th May, 1954 to be bad in law, and therefore, null and void on the ground that the land originally was Kazi Inam land which had ceased to be such land only pursuant to the order dated 5th February, 1961, and that therefore, in the year 1954 the predecessor of the petitioners could not have sold the same to third party.

2. Few facts relevant for the decision in the matter are that the lands in question were originally bearing Survey Nos.299 and 300 and were Kazi Inam Lands and the petitioners' father by name Ramjoddin J. Kazi was the holder of the said Kazi Inam Lands. The father of the respondent Nos.1 to 3 was a tenant in respect of the said land. On 1st April, 1954 the said Inam came to be abolished. On 3rd May, 1954, the holder of Inam paid the occupancy price in respect of the suit lands. However, the order for regrant was passed only on 5th February, 1961. Meanwhile, on 11th

May, 1954, the father of the petitioners sold the said lands to the tenant of the said lands by Sale Deed. In the year 1963, the Tahsildar commenced the proceedings under Section 32G of the Bombay Tenancy Act, and issued necessary certificate under Section 32M in favour of the same persons who had purchased the said property under the Sale Deed dated 11th May, 1954 as the same persons were tenant in relation to the said lands. The petitioners under the Tenancy Case No.1 of 1985 sought to seek declaration that the said transaction in the year 1954 was invalid, and therefore, the possession of the lands should be restored back to the petitioners. The application came to be rejected by the Trial Court as well as the Appellate Court, and hence the present petition.

3. The only ground on which the impugned orders are sought to be challenged is that since the land in question was a Kazi Ianm Land and on abolition of the Inam, though occupancy price was paid in the month of May, 1954, the order of regrant was actually passed in favour of the father of the petitioners only on 5th February, 1961, and therefore, the father of the petitioners could not have sold the said land in May, 1954. Undoubtedly, though the order of regrant was passed in the year 1961, the fact remains that the

Inam was abolished in the month of April, 1954, and consequent thereof, the occupancy price of the suit lands was paid by the father of the petitioners in the month of May, 1954. Once the order of regrant was passed on 5th February, 1961, it would obviously take effect from the date of payment of occupancy price of the suit lands. Considering the same, no fault can be found with the said transaction entered into between the father of the petitioners and the purchasers of the lands. For the same reason, therefore, the Sale Deed dated 11th May, 1954 cannot be held to be illegal or null and void.

4. It was also sought to be contended that the lands in question were Kazi Inam Lands, and therefore, on abolition thereof, there would not be automatic application of the Bombay Tenancy Act. This point is settled by the decision of the Apex Court in **Pandurang Dnyanoba Lad v. Dada Rama Methe & Ors.,** reported in AIR 1976 SC 1910.

5. For the reasons therefore stated above, and as no other point is canvassed in the matter, no fault can be found in the impugned orders passed by the authorities below and they do not warrant interference in the writ jurisdiction. Hence, the petition fails

and is hereby dismissed. Rule is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)